

Appl. No. 09/902,144
Docket No. 8633
Amdt. dated 08/09/07
Reply to Office Action mailed on 05/04/07
Customer No. 27752

REMARKS

Claims 1, 6, 16, and 23 are pending in the present application. Claims 1, 6, and 23 are amended. Claims 25, 26, and 27 are new. Claims 2-5, 7-15, 17-22, and 24 have been canceled without prejudice.

Rejection Under 35 USC §112, Second Paragraph

The Office Action rejects claims 1, 8, and 17 under 35 USC, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically the Office Action states the preamble recites a method of optimizing shelf space. However, the body of the claim recites a computer executable program. It is unclear, according to the Action, whether the claim is directed to a method or a computer readable medium.

In response, Applicant amends claim 1 to overcome the rejection. Applicant amends claim 1 to remove reference to the "computer program." Thus, Applicant submits the claim is now clearly a "method" (and not a computer readable medium).

Rejection Under 35 USC §101

The Office Action rejects the pending claims under 35 USC 101 because the claimed invention is directed to non-statutory subject matter. Notably, the Office Action states that it is unclear as what the "*optimal value* is used for" and thus "fails to recite a concrete and tangible result." In response, Applicant amends claim 1 to overcome the rejection.

Claim 1 is amended such that the term "optimal value" is deleted. Applicant amends the claim to add the term "mathematically optimize." The concrete and tangible result, as the claim as now amended, is the selection of a shelf space size set for the product (among the hypothetical sets of shelf space size set data). It is by mathematically optimizing for the product category sales (to which the product belongs) that *inter alia*

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leads one skilled in the art to identify the shelf space size set. *See e.g.*, page 10, line 26 ("mathematical optimization algorithms").

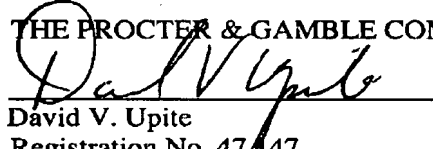
Conclusion

In light of the above remarks, it is requested that the Office reconsider and withdraw the rejections under 35 USC §§ 112 and 101. Early and favorable action is respectfully requested.

Respectfully submitted,

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Date: August 9, 2007
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